

Vidya Amin

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.12352 OF 2022

Sanjay Shankar Sanap & Anr. .. Petitioners

Vs.

The State of Maharashtra & Ors. .. Respondents

Mr. N.V.Bandiwadekar i/b. Mrs.Aswini N. Bandiwadekar, for the
Petitioners.

Smt. S.S.Bhende, AGP for the State.

**CORAM : S.V. GANGAPURWALA &
R.N.LADDHA, JJ.**

DATE : OCTOBER 18, 2022.

P.C.:

1. Heard learned counsel for the petitioners and learned AGP for the
Respondents.

2. Rule.

3. Rule made returnable forthwith. By consent of the parties the writ
petition is heard finally.

4. The contention of the petitioners is that petitioner no. 1 was
appointed as the Assistant Teacher on the unaided post on 12th June,
2006. The Education Officer granted approval to the unaided
appointment of the petitioner under the order dated 2nd March, 2009.
The petitioner was transferred to the aided post on 1st July, 2014. The
Education Officer has approved the transfer of the petitioner to aided
post but in phase wise manner. The learned counsel for the petitioners

submits that the same is erroneous.

5. The learned AGP submits that in view of circular dated 28/06/2016 and 24/08/2018, the order has been rightly passed.

6. We have considered the submissions of learned counsel for the petitioners and learned AGP for the Respondent-State.

7. The factual matrix does not appear to be disputed. The Petitioner is appointed on the unaided post on 12th June, 2006 and after rendering services for eight years was transferred on the aided post on 1st July, 2014. This Court in the judgment and order dated 4th July 2019 passed in Writ Petition No.1493 of 2018 and connected Writ Petitions has held that some of the clauses of Circular dated 28/06/2016 are erroneous. It has been held that if the candidate has worked for more than three years on the unaided post and transferred to 100% grant-in-aid post then approval is to be granted on 100% grant-in-aid. Of course the transfer being prior to the amendment of June 2020 to Rule 41A of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (hereinafter referred to as, "MEPS Rules").

8. In the present case the petitioner is transferred prior to the amendment of Rule 41A of the MEPS Rules. The said amendment came into force on 8th June 2020.

9. In the result, we pass the following order:

(i) The impugned order to the extent of granting approval to the Petitioner's transfer in phase wise manner is quashed and set aside.

(ii) The Respondent - Education Officer shall reconsider the transfer of petitioner to 100% grant-in-aid and if the Education Officer comes to the conclusion that the post on which the petitioner is transferred is 100% grant-in-aid then shall grant approval to transfer of the petitioner to the aided posts on 100% grant-in-aid from the date of transfer. The said exercise shall be carried out expeditiously and preferably within four months. Depending upon the order passed, the consequence shall follow.

10. Rule is accordingly made absolute.

11. The writ petition is disposed of. No costs

(R.N. LADDHA, J.)

(S.V. GANGAPURWALA, J.)